

REMARKS

This responds to the Office Action mailed on July 5, 2005.

Claims 3, 4, 7, 8-11 are amended; claims 1, 2, and 5-6 were previously canceled, without prejudice to the Applicant; as a result, claims 3-4 and 7-11 are now pending in this application.

Specification/Claim Objections

Claim 3 was objected to as having informalities. The corrections as requested by the Examiner have been made herein, and withdrawal of this objection is respectfully requested.

§ 103 Rejection of the Claims

Claims 3-4, 7, and 9-10 were rejected under 35 U.S.C. § 103(a) as being obvious over Campbell et al. (U.S. Patent No. 5,915,072; hereinafter "Campbell") in view of Ellersick (U.S. Patent No. 4,159,411). It is of course fundamental that in order to sustain an obviousness rejection that each and every element in the rejected claims must be taught or suggested in the proposed combination of references.

Applicant respectfully notes that Campbell is limited in use as a surface heater as deliberately reduces the heating efficiency (Col 2, Line 13-16) and (Col 15, Line 9-10). Only by limiting the infrared potential is Campbell cable of having a post under the lamp (reference item 20 in Figure 2). However, clearly as is indicated by Campbell, such a post is likely to heat and distort, if the full range of infrared heating is allowed. Applicant's amended claim 3 states "at least one swivel point for a 360° rotation lies on a non-radiation side of module." Thus, there is no limitation on power of radiation in Applicant's invention. Note also that a 180° rotation along the normal axis to the bulb axis is not possible in Campbell. The teachings as illustrated in Campbell lacks two swivel points, which is recited now in amended independent claim 3.

Moreover, when Campbell and Ellersick are combined, the proposed combination still lacks the amended elements recited above. The Examiner states that Ellersick teaches an infrared heating apparatus with flexible frame comprising two modules attached to one another by a one pivot and rotatable 180° *on the x-axis*. Precisely herein lies another reason why the

combination cannot have rendered Applicant's claimed invention obvious. In fact, if anything, the combination teaches away from Applicant's claimed invention.

Amended claim 3 is clear on this distinction stating that "at least one module is attached to at least two swivel points." This is a substantial distinction, which allows any apparatus made in conformance with Applicant's claimed invention to be truly flexible and *with full power*.

Additionally, Applicant has amended claim 3 to state: "the said apparatus may be used at its fully rated power in all configurations."

So, the obviousness rejection is insufficient because the proposed combination fails to teach or suggest each and every element of the amended independent claim 3. As such, the rejections of record should be withdrawn and claim 3 along with its dependent claims should be allowed. Applicant respectfully requests an indication of the same.

Claim 8 was rejected under 35 U.S.C. § 103(a) as being obvious over Campbell in view of Ellersick and further in view of Stephansen et al. (U.S. Patent No. 4,494,316; hereinafter "Stephansen"). Claim 8 is dependent from amended independent claim 3; thus claim 8 is allowable in view of the remarks and amendments presented above with respect to independent claim 3. Applicant respectfully requests an indication of the same.

Claim 11 was rejected under 35 U.S.C. § 103(a) as being obvious over Campbell in view of Ellersick and further in view of Van Putten et al. (U.S. Patent No. 5,533,567; hereinafter "Van Putten"). Again, claim 11 is dependent from amended independent claim 8; so, claim 11 is allowable in view of the amendments and remarks presented above with respect to independent claim 3.

Additionally, Applicant would like to further point out that Van Putten teaches only a rigid structure and only provides rotation of an *injected fluid* not the rotation of the heater. These teachings are not equivalent for heat flow, since Van Putten is convective and Applicant's claimed invention is radiative (more desirable for surface heating).

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 03-16-09

By 

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on March 16, 2009.

CHERYL L. DANKERS

Name


Signature